

The Burger Court Opinion Writing Database

Illinois v. Allen

397 U.S. 337 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 20, 1970

Re: No. 606 - Illinois v. Allen

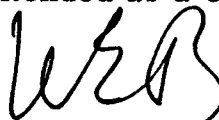
Dear Hugo:

You have written, as I knew you would, a splendid opinion which "hits the nail on its head" in short order.

I have a small thought: On page 8, after line 9, *possibly consider* insert the following: "~~We must recognize, for example,~~ a defendant might conceivably, as a matter of calculated strategy, elect to spend a prolonged period in confinement for contempt in the hope that adverse witnesses might be unavailable after a lapse of time. In a serious case the stakes are so high that this course would be worth the gamble. []] The use of contempt powers to meet this problem is therefore of limited utility."

The possibility, as in the pending New York trial before Judge Murtagh, is very real that the Defendants would gamble several years in contempt confinement on the chance the state could not make its case after that time.

None of my comments are intended as a condition of my hearty concurrence.



W. E. B.

P.S. -- In case you missed it, the TIME Magazine comment on this problem is interesting.

Mr. Justice Black

If must be recognized however that →
In such a case, the courts must guard against allowing a defendant to profit from his own wrong in this way.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT LIBRARY

Supreme Court of the United States
Washington, D. C. 20543

OF
JUSTICE

March 24, 1970

Re: No. 606 - Illinois v. Allen

MEMORANDUM TO THE CONFERENCE:

There are now six votes for Justice Black's opinion. Justice Brennan has concurred separately; Justice Douglas will dissent.

If possible we ought to get this opinion out "soonest", always bearing in mind that dissenters need time. There are numerous situations in prospect and in being which will take guidance from our holdings.

W.E.B.

W. E. B.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 24, 1970

Dear Bill:

Someone gave me a "bum steer" and I
regret not clearing with you before sending my
memo.

Regards,

WESB
W. E. B.

Mr. Justice Douglas

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Black, J.

No. 606.—OCTOBER TERM, 1969

Circulated: 3-17-70

State of Illinois, Petitioner, } On Writ of Certiorari to
v. } the United States Court
William Allen. } of Appeals for the
Seventh Circuit.

Recirculated: _____

[March —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . ." We have held that the Fourteenth Amendment makes the guarantees of this clause obligatory upon the States. *Pointer v. Texas*, 380 U. S. 400 (1965). One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. *Lewis v. United States*, 146 U. S. 370 (1892). The question presented in this case is whether an accused can claim the benefit of this constitutional right to remain in the courtroom while at the same time he engages in speech and conduct which is so noisy, disorderly, and disruptive that it is exceedingly difficult or wholly impossible to carry on the trial.

The issue arose in the following way. The respondent, Allen, was convicted by an Illinois jury of armed robbery and was sentenced to serve 10 to 30 years in the Illinois Penitentiary. The evidence against him showed that on August 12, 1956, he entered a tavern in Illinois and, after ordering a drink, took \$200 from the bartender.

REPRODUCED FROM THE COLLECTIONS OF THE FRANCIS & TAYLOR DIVISION

4, 5, 6, 7, 8

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES Black, J.

No. 606.—OCTOBER TERM, 1969

Circulated: _____

Recirculated: 3/19/70

State of Illinois, Petitioner, }
v. } On Writ of Certiorari to
William Allen. } the United States Court
of Appeals for the
Seventh Circuit.

[March —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . ." We have held that the Fourteenth Amendment makes the guarantees of this clause obligatory upon the States. *Pointer v. Texas*, 380 U. S. 400 (1965). One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. *Lewis v. United States*, 146 U. S. 370 (1892). The question presented in this case is whether an accused can claim the benefit of this constitutional right to remain in the courtroom while at the same time he engages in speech and conduct which is so noisy, disorderly, and disruptive that it is exceedingly difficult or wholly impossible to carry on the trial.

The issue arose in the following way. The respondent, Allen, was convicted by an Illinois jury of armed robbery and was sentenced to serve 10 to 30 years in the Illinois State Penitentiary. The evidence against him showed that on August 12, 1956, he entered a tavern in Illinois and, after ordering a drink, took \$200 from the bartender

ALL RIGHTS RESERVED FROM THE COLLECTIONS OF THE FRANCIS & TAYLOR DIVISION, LIBRARY OF CONGRESS

March 23, 1970

Dear Chief:

Re: No. 606 - State of Illinois v. Allen

I thought your suggested addition to the section of the opinion dealing with the contempt remedy was a good one, and I have added it on page 8 of the attached recirculation.

Sincerely,



H. L. B.

The Chief Justice

cc: Members of the Conference

Change p. 8 -

File
Circulated 3/23/70

SUPREME COURT OF THE UNITED STATES

No. 606.—OCTOBER TERM, 1969

State of Illinois, Petitioner, <i>v.</i> William Allen.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
---	---	---

[March —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . ." We have held that the Fourteenth Amendment makes the guarantees of this clause obligatory upon the States. *Pointer v. Texas*, 380 U. S. 400 (1965). One of the most basic of the rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his trial. *Lewis v. United States*, 146 U. S. 370 (1892). The question presented in this case is whether an accused can claim the benefit of this constitutional right to remain in the courtroom while at the same time he engages in speech and conduct which is so noisy, disorderly, and disruptive that it is exceedingly difficult or wholly impossible to carry on the trial.

The issue arose in the following way. The respondent, Allen, was convicted by an Illinois jury of armed robbery and was sentenced to serve 10 to 30 years in the Illinois State Penitentiary. The evidence against him showed that on August 12, 1956, he entered a tavern in Illinois and, after ordering a drink, took \$200 from the bartender

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSBPCNOC 50 ADV 111 IN

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 30, 1970

MEMORANDUM FOR THE CONFERENCE

Re: No. 606 - Illinois v. Allen
Cert to CA 7th

I have an opinion from Justice Douglas in this case which, I assume, makes it ready to hand down tomorrow, provided those who have agreed with me think it should go down without further delay. My own belief is that no reply is required and it would be better to hand down the opinion precisely as it is tomorrow morning.

Please let me know at once, if possible.

Sincerely,



H. L. B.

The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 30, 1970

MEMORANDUM FOR THE CONFERENCE

Re: No. 606 - Illinois v. Allen.

All members of the Court have agreed
that this case be handed down tomorrow morn-
ing.

Sincerely,


H. L. B.

The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

March 24, 1970

MEMORANDUM TO THE COURTIERER:

re: No. 606 - Illinois v. Allen

A Memorandum from The Chief Justice states "Justice Douglas will dissent." I had not decided to dissent, so I do not know where this information came from.

I voted to reverse and I am still of that view. But I have had considerable problems and I have not yet worked them out.

W. O. D.

The Chief Justice
Mr. Justice Black
Mr. Justice Burger
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

*file
3-30
noted*

SUPREME COURT OF THE UNITED STATES

No. 606.—OCTOBER TERM, 1969

State of Illinois, Petitioner, }
v. } On Writ of Certiorari to
William Allen. } the United States Court
of Appeals for the
Seventh Circuit.

[April —, 1970]

MR. JUSTICE DOUGLAS.

I agree with the Court that a criminal trial, in the constitutional sense, cannot take place where the courtroom is a bedlam and either the accused or the judge is hurling epithets at one another. A courtroom is a hallowed place where trials must proceed with dignity and not become occasions for entertainment by the participants, by extraneous persons, by modern mass media or otherwise.

My difficulty is not with the basic hypothesis of this decision, but with the use of this case to establish the appropriate guidelines for judicial control.

This is a state case, the trial having taken place nearly 13 years ago. That elapse of time is not necessarily a barrier to a challenge of the constitutionality of a criminal conviction. But in this case it should be.

There is more than an intimation in the present record that the defendant was a mental case. The passage of time since 1957, the date of the trial, makes it, however, impossible to determine what the mental condition of the defendant was at that time. What a trial judge should do with a mental patient presents difficult questions. What he should do with a defendant whose courtroom antics may not be volitional is a perplexing

1, 2
Small changes
throughout

To: The Chief Justice
Mr. Justice Black ✓
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 606.—OCTOBER TERM, 1969

State of Illinois, Petitioner, } On Writ of Certiorari to
v. } the United States Court
William Allen. } of Appeals for the
From: Douglas, J. }
3/30/70

[April —, 1970]

MR. JUSTICE DOUGLAS.

I agree with the Court that a criminal trial, in the constitutional sense, cannot take place where the courtroom is a bedlam and either the accused or the judge is hurling epithets at the other. A courtroom is a hallowed place where trials must proceed with dignity and not become occasions for entertainment by the participants, by extraneous persons, by modern mass media or otherwise.

My difficulty is not with the basic hypothesis of this decision, but with the use of this case to establish the appropriate guidelines for judicial control.

This is a state case, the trial having taken place nearly 13 years ago. That elapse of time is not necessarily a barrier to a challenge of the constitutionality of a criminal conviction. But in this case it should be.

There is more than an intimation in the present record that the defendant was a mental case. The passage of time since 1957, the date of the trial, makes it, however, impossible to determine what the mental condition of the defendant was at that time. The fact that a defendant has been found to understand "the nature and object of the proceedings against him" and thus competent to stand trial¹ does not answer the difficult questions as to what a trial judge should do with an otherwise mentally ill defendant who creates a court-

¹ See n. 5, *infra*.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSBDCNOC 50 4V 411 1 IN 1

Supreme Court of the United States
Washington, D. C. 20543

March 31, 1970

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

Dear Hugo:

In No. 606 - Illinois v. Allen,
when you announce your opinion this morning,
would you add the following:

"Justice Douglas has filed a separate
opinion in which he does not dissent from
the basic hypothesis of the Court's opinion,
but concurs in denying relief to the
respondent on grounds other than those
stated in the opinion of the Court."

W. O. D. *WOD*

Mr. Justice Black

*Mr. Justice Brennan writes
agrees with the opinion and
judgment of the Court, has filed
a separate opinion*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN M. HARLAN

March 19, 1970

Re: No. 606 - Illinois v. Allen

Dear Hugo:

Subject to two suggestions, I am glad to join your opinion.

On pages 6 and 7 where you speak of the gagging technique, I would like to see the runover sentence revised to read "would at least comply with that part of the Sixth Amendment's purposes that accords the defendant an opportunity to confront the witnesses at the trial."

On page 8, I would like to see the last sentence in part II omitted, since I would be reluctant to subscribe to anything that casts doubt as to the permissibility of using civil contempt to deal with courtroom situations of this kind.

Sincerely,

JMH
J. M. H.

Mr. Justice Black

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT CONFERENCE

March 23, 1870

Re: No. 606 - Illinois v. Allen

Dear Hugo:

I join your opinion as recirculated this morning. I should hope that it would be possible for us to convene the Court some time this week so that this opinion (and perhaps others that may be ready) could be announced before the Session next Monday. Announcement of the Allen case ought not to be deferred any longer than is absolutely necessary.

Sincerely,

J. M. H.

Mr. Justice Black

CC: The Conference

Circulated

3-23-70

SUPREME COURT OF THE UNITED STATES

No. 606.—OCTOBER TERM, 1969

State of Illinois, Petitioner, } On Writ of Certiorari to
v. } the United States Court
William Allen. } of Appeals for the
Seventh Circuit.

[March —, 1970]

MR. JUSTICE BRENNAN, concurring.

has

The safeguards that the Constitution accords to criminal defendants presuppose that government has a sovereign prerogative to put on trial those accused in good faith of violating valid laws. Constitutional power to bring an accused to trial is fundamental to a scheme of "ordered liberty" and prerequisite to social justice and peace. History has known the breakdown of lawful penal authority—the feud, the vendetta, and the terror of penalties meted out by mobs or roving bands of vigilantes. It is known, too, the perversion of that authority. In some societies the penal arm of the state has reached individual men through secret denunciation followed by summary punishment. In others the solemn power of condemnation has been confided to the caprice of tyrants. Down the corridors of history have echoed the cries of innocent men convicted by these and other irrational and arbitrary procedures. These are some of the alternatives history offers to the procedure adopted by our Constitution. The right of a defendant to trial—to trial by jury—has long been cherished by our people as a vital restraint on the penal authority of government. And it has never been doubted that under our constitutional traditions trial in accordance with the Constitution is the proper mode by which government exercises that authority.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPTS DIVISION

Circulated
3-27-70

SUPREME COURT OF THE UNITED STATES

No. 605—OCTOBER TERM, 1969

State of Illinois, Petitioner, } On Writ of Certiorari to
 v. } the United States Court
William Allen. } of Appeals for the
 } Seventh Circuit.

[March —, 1970]

MR. JUSTICE BRENNAN, concurring.

The safeguards that the Constitution accords to criminal defendants presuppose that government has a sovereign prerogative to put on trial those accused in good faith of violating valid laws. Constitutional power to bring an accused to trial is fundamental to a scheme of "ordered liberty" and prerequisite to social justice and peace. History has known the breakdown of lawful penal authority—the feud, the vendetta, and the terror of penalties meted out by mobs or roving bands of vigilantes. It has known, too, the perversion of that authority. In some societies the penal arm of the state has reached individual men through secret denunciation followed by summary punishment. In others the solemn power of condemnation has been confided to the caprice of tyrants. Down the corridors of history have echoed the cries of innocent men convicted by other irrational or arbitrary procedures. These are some of the alternatives history offers to the procedure adopted by our Constitution. The right of a defendant to trial—to trial by jury—has long been cherished by our people as a vital restraint on the penal authority of government. And it has never been doubted that under our constitutional traditions trial in accordance with the Constitution is the proper mode by which government exercises that authority.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

SUPREME COURT OF THE UNITED STATES

No. 606.—OCTOBER TERM, 1969

State of Illinois, Petitioner, v. William Allen.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
--	---	---

[March —, 1970]

MR. JUSTICE BRENNAN, concurring.

The safeguards that the Constitution accords to criminal defendants presuppose that government has a sovereign prerogative to put on trial those accused in good faith of violating valid laws. Constitutional power to bring an accused to trial is fundamental to a scheme of "ordered liberty" and prerequisite to social justice and peace. History has known the breakdown of lawful penal authority—the feud, the vendetta, and the terror of penalties meted out by mobs or roving bands of vigilantes. It has known, too, the perversion of that authority. In some societies the penal arm of the state has reached individual men through secret denunciation followed by summary punishment. In others the solemn power of condemnation has been confided to the caprice of tyrants. Down the corridors of history have echoed the cries of innocent men convicted by other irrational or arbitrary procedures. These are some of the alternatives history offers to the procedure adopted by our Constitution. The right of a defendant to trial—to trial by jury—has long been cherished by our people as a vital restraint on the penal authority of government. And it has never been doubted that under our constitutional traditions trial in accordance with the Constitution is the proper mode by which government exercises that authority.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 19, 1970

No. 606 - Illinois v. Allen

Dear Hugo,

I am glad to join the opinion you
have written for the Court in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Black

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

March 19, 1970

Re: No. 606 - Illinois v. Allen

Dear Hugo:

Please join me in your opinion
in this case.

Sincerely,

B.R.V.

Mr. Justice Black

cc: The Conference

March 30, 1970

Re: No. 606 - Illinois v. Allen

Dear Hugo:

I agree with you about handling
down Allen tomorrow.

Sincerely,

B.R.W.

Mr. Justice Black

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 24, 1970

Re: No. 606 - Illinois v. Allen

Dear Hugo:

Please join me.

Sincerely,


T.M.

Mr. Justice Black

cc: The Conference

RECORDED
SERIALIZED
FBI
DIVISION OF CONGRESS